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EXAMINER

NGUYEN, PHUNG

ART UNIT PAPER NUMBER

2632

DATE MAILED: 01/02/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/041,937

Applicant(s)

NEE, WRIGHT JACKEN

Examiner

Phung T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8,11,13-16,18,21,23,25,26 and 30-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8,11,13-16,18,21,23,25,26 and 30-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 26, and 30-34 are rejected under 35

U.S.C. 102(b) as being anticipated by Nappholz et al. (U.S. Pat. 5,720,770).

**Regarding claim 1:** Nappholz et al. disclose a cardiac stimulation system with enhanced communication and control capability comprising:

a. receiving a wireless signal from the implanted medical device (figure 1, col. 3, lines 61-67, and col. 4, lines 1-5);

b. transmitting the distress call in the form of a voice synthesized message which is met by the cellular telephone (figure 1, col. 6, lines 45-50, and col. 10, lines 11-20) to a remote location in response to receiving the wireless signal (col. 4, lines 6-16, col. 5, lines 15-18, and col. 10, lines 11-15).

**Regarding claim 2:** Nappholz et al. disclose the wireless signal is indicative of a medical emergency experienced by a human being wearing the implanted medical device (col. 10, lines 1-15).

**Regarding claim 4:** Nappholz et al. disclose the wireless signal is indicative of a medical emergency (col. 10, lines 11-15).

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**Regarding claim 5:** Nappholz et al. disclose the distress call containing vital data pertaining to an organ being monitored by the implanted medical device (col. 10, lines 1-15).

**Regarding claim 6:** Nappholz et al. disclose the distress call containing location information (col. 10, lines 15-28).

**Regarding claim 8:** Nappholz et al. disclose the implanted medical device comprising one of a pacemaker, and implantable cardioverter defibrillator and a combination thereof (col. 4, lines 3-35).

**Regarding claim 11:** Nappholz et al. disclose the implanted medical device comprising a transmitter configured to transmit the wireless signal and a heart regulating device (col. 5, lines 8-18).

**Regarding claim 13:** Nappholz et al. disclose a wireless external receiver configured to receive a wireless signal from an implanted medical device; and an external communications device connected to the wireless external receiver and configured to transmit a distress call in the form of a voice synthesized message which is met by the cellular telephone (figure 1, col. 6, lines 45-50, and col. 10, lines 11-20) to a remote location (figure 1, col. 5, lines 19-67, and col. 6, lines 1-50).

**Regarding claim 14:** Nappholz et al. disclose the distress call containing location information indicating a location of the external communication device (col. 10, lines 20-25).

**Regarding claim 15:** Nappholz et al. disclose the location information is included in the distress call (col. 3, lines 11-16).

**Regarding claim 16:** Nappholz et al. disclose the distress call containing vital data pertaining to an organ being monitored by the implanted medical device (col. 10, lines 1-15).

**Regarding claim 18:** Nappholz et al. disclose the implanted medical device comprising one of a pacemaker, and implantable cardioverter defibrillator and a combination thereof (col. 4, lines 3-35).

**Regarding claim 21:** Nappholz et al. disclose the implanted medical device comprising a transmitter configured to transmit the wireless signal and a heart regulating device (col. 5, lines 8-18).

**Regarding claim 23:** Nappholz et al. disclose the external communications device is configured to determine, prior to transmitting the distress call, that the wireless signal is indicative of a medical emergency being experienced by a human being wearing the implanted medical device (col. 10, lines 1-20).

**Regarding claim 26:** Nappholz et al. disclose the wireless transmitter is configured to transmit the wireless distress signal to an external system configured to place a distress call to a remote location (col. 5, lines 15-18, and col. 10, lines 11-15).

**Regarding claim 30:** Nappholz et al. disclose a defibrillator, responsive to organ activity monitored by the monitoring device, wherein the wireless transmitter is activated by the monitoring device to transmit the wireless distress signal only when the defibrillator has been activated to stimulate an organ (col. 10, lines 1-15).

**Regarding claim 31:** Nappholz et al. disclose the wireless transmitter is configured to transmit the wireless distress signal to an external system, and wherein the external system is configured to place a distress call to a remote location (col. 4, lines 6-16).

**Regarding claim 32:** Nappholz et al. disclose the external system is a portable unit configured for communication with the wireless transmitter while in close proximity thereto (col. 7, lines 66-67, and col. 8, lines 1-2).

**Regarding claim 33:** Nappholz et al. disclose the external system comprising a locator device configured to determine a location of the external system (col. 10, lines 20-25).

**Regarding claim 34:** Nappholz et al. disclose the external communication device comprising a voice synthesizer in the form of the cellular telephone (figure 1, col. 6, lines 45-50).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (U.S. Pat. 5,720,770) in view of Nelson et al. (U.S. Pat. 6,564,104).

**Regarding claim 25:** Nappholz et al. disclose a monitor device and a wireless transmitter in communication with the monitoring device and configured to transmit a wireless distress signal in response to predetermined activity of the monitoring device (figure 1, col. 10, lines 1-16). Nappholz et al. teach sending out information signals related to monitored body conditions when an identification signal is received (col. 14, lines 14-30) rather than a wireless distress signal including at least one of serial number and the model number as claimed. However, using serial number and the model number as a confirmation of target device is old and well known in

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the art as taught by Nelson et al. (col.9, lines 17-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the technique of Nelson et al. in the system of Nappholz et al. in order to provide for authentication of target device if desired.

**Regarding claim 35:** Refer to claim 25 above.

5. Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (U.S. Pat. 5,720,770) in view of Njemanze (U.S. Pat. 6,468,219).

**Regarding claim 36:** Nappholz et al. disclose a wireless external receiver configured to receive a wireless signal from an implanted medical device; and an external communications device in communication with the wireless external receiver and configured to transmit a distress call to a remote location in response to receiving input from the wireless external receiver (figure 1, col. 5, lines 19-67, and col. 6, lines 1-50). Nappholz et al. do not disclose an override device connected to the external communication device configured to prevent transmission of the distress call. However, Njemanze discloses an implantable telemetric transcranial Doppler device providing means for the patient to override any calls (col. 9, lines 28-37). Therefore, it would have been obvious to the skilled artisan to combine the teachings of Njemanze and Nappholz et al. because they both teach a device adapted for implantation into the human body. It is seen that Njemanze's teaching of an override device would enhance the system of Nappholz et al. by allowing the patient to terminate any calls as desired.

**Regarding claim 37:** Njemanze discloses the override device is operated by a human being (col. 9, lines 36-37).

**Regarding claim 38:** Nappholz et al. disclose a wireless external receiver configured to receive a wireless signal from an implanted medical device; and an external communications device in communication with the wireless external receiver and configured to transmit a distress call the form of a voice synthesized message which is met by the cellular telephone (figure 1, col. 6, lines 45-50, and col. 10, lines 11-20) to a remote location (figure 1, col. 5, lines 19-67, and col. 6, lines 1-50). Nappholz et al. do not disclose an override device connected to the external communication device configured to prevent transmission of the distress call. However, Njemanze discloses an implantable telemetric transcranial Doppler device providing means for the patient to override any calls (col. 9, lines 28-37). Therefore, it would have been obvious to the skilled artisan to combine the teachings of Njemanze and Nappholz et al. because they both teach a device adapted for implantation into the human body. It is seen that Njemanze's teaching of an override device would enhance the system of Nappholz et al. by allowing the patient to terminate any calls as desired.

6. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (U.S. Pat. 5,720,770) in view of Njemanze (U.S. Pat. 6,468,219) and further in view of Nelson et al. (U.S. Pat. 6,564,104).

**Regarding claim 39:** Nappholz et al. teach sending out information signals related to monitored body conditions when an identification signal is received (col. 14, lines 14-30). The combination does not teach a wireless distress signal including at least one of serial number and the model number as claimed. However, using serial number and the model number as a confirmation of target device is old and well known in the art as taught by Nelson et al. (col.9,



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lines 17-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the technique of Nelson et al. in the system of Nappholz et al. and Njemanze in order to provide for authentication of target device.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 2, 4-6, 8, 11, 13-16, 18, 21, 23, 25, 26, 30-39 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung Nguyen whose telephone number is (703)308-6252. The examiner can normally be reached on Monday to Friday from 8:00am to 5:30pm.

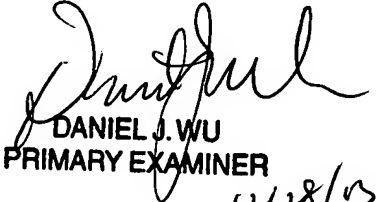
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu can be reached on 703-308-6730. The fax numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-308-9051 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

Examiner: Phung Nguyen

Date: December 22, 2003

  
DANIEL J. WU  
PRIMARY EXAMINER  
12/28/03